IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4291 of 1997

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VITHALRAO INGLE. & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR YASH NANAVATI, NANAVATY ADVOCATES for petitioners
MR MR MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent : 1,
MR PK SONI for Respondent : 2, - Absent

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/12/2007

ORAL JUDGMENT

1. By this petition under Section 482 of the Code of Criminal

Procedure, 1973, the petitioners have prayed to quash Criminal Complaint No.3130/1995 pending before the learned Metropolitan Magistrate, Court No.16, Ahmedabad filed by the respondent No.2 herein. The petitioners have also challenged the order of issuing summons by the learned Metropolitan Magistrate, Ahmedabad in the said complaint.

2. The facts of the case stated briefly are that the respondent No.2 – original complainant had lodged a complaint before the learned Metropolitan Magistrate, Ahmedabad, wherein it is stated that the petitioners herein had purchased clothes worth Rs.11,296=62 ps. on 16.11.1992 vide Bill No.197 and goods worth Rs.17,240=00 ps. on 19.11.1992 vide Bill No.207, in all worth Rs.28,554=62 ps. It is alleged in the complaint that the complainant had asked for cash payment in respect of the goods in question, however, the petitioners had assured him that they would make payment of the entire amount along with interest within a period of a month. Hence, on the basis of such assurance, the complainant had delivered goods worth Rs.28,544=62 ps. to the petitioners. It is the case of the complainant that, despite a long time having elapsed, not a single penny has been paid towards payment of the said goods. The complainant, accordingly, lodged the complaint against the petitioners alleging the offences of cheating, breach of trust etc.

3. Pursuant to the filing of the complaint, the learned Metropolitan Magistrate, Court No.16, Ahmedabad, had

taken cognizance of the offence and issued summons for the offences punishable under Sections 420 and 120 of the Indian Penal Code, which has given rise to the present application.

4. Heard Mr.Yash Nanavati, learned advocate for M/s Nanavaty Associates for the petitioners and Mr.M.R.Mengdey, learned Additional Public Prosecutor for the respondent No.1 – State of Gujarat.

5. Learned advocate for the petitioners has submitted that the dispute in question is purely a civil dispute, however, with an ulterior motive to harass the petitioners, the respondent No.1 has filed criminal complaint. It is submitted that a bare perusal of the complaint shows that the ingredients of the offences alleged are not made out. It is submitted that the main grievance against the petitioners is that the payment in respect of the goods supplied has not been made. Hence, the remedy for the respondent No.2 is to initiate proceedings under the civil law for the recovery of the said amount. However, the respondent has resorted to filing the present criminal complaint.

6. It is urged that, it is settled legal position that, in respect of civil disputes, no proceedings under the criminal law should be initiated, hence, the complaint as well as the order of issuing summons be quashed.

7. Mr.P.K.Soni, learned advocate for the respondent No.2, though duly informed regarding the hearing of the

matter, has not remained present.

8. Having considered the submissions advanced by the learned advocate for the petitioners and the learned Additional Public Prosecutor, the question that arises for examination is as to whether on the facts disclosed in the petition of the complaint the offences under Sections 406 and 420 of the Indian Penal Code, or any offence whatsoever is made out. A perusal of the complaint clearly shows that the only allegation in the complaint against the petitioners is that the petitioners had assured the complainant that they would make payment in respect of the goods in question with interest, within a period of a month, but despite the lapse of a considerable period of time, the same has not been paid. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the case of ***S.W.Palnitkar v. State of Bihar*** (2002)1 SCC 241, the Supreme Court has held that, in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up a promise subsequently cannot be presumed as an act leading to cheating. In the present case, it has nowhere been stated that at the very inception there was

any intention on the part of the petitioners to cheat, which is a condition precedent for an offence under Section 420 IPC.

9. As regards offence under Section 405 IPC, it is apparent that the dispute pertains only to non-payment of dues in respect of goods supplied by the complainant. Mere non-payment of dues cannot in any manner be said to constitute an offence of criminal breach of trust, as envisaged under Section 405 IPC.

10. In the light of the facts noted hereinabove, this Court is of the view that the complaint does not disclose any offence much less any offence under Sections 405 and 420 IPC and the present case is a case of a purely civil dispute between the parties for which remedy lies before a Civil Court by filing a properly constituted suit.

11. The Apex Court, in the case of ***Indian Oil Corporation v. NEPC India Ltd.*** [(2006)6 SCC 736], has held that, *"While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes*

and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

12. Examining the facts of the present case in the light of the decisions cited hereinabove, even if the allegations made in the complaint are accepted to be true and correct, the petitioners cannot be said to have committed any offence of cheating or criminal breach of trust. Neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant. The averments made in the petition of complaint would amount to civil liability inter se the parties and not criminal liability. Hence, the cognizance taken by the learned Magistrate is clearly an abuse of the process of court, warranting interference, in the interest of justice. This Court, therefore, deems it expedient to quash the criminal complaint as well as further proceedings pursuant thereto.

13. For the foregoing reasons, the application succeeds and is, accordingly, allowed. Criminal Complaint No.3130 of 1995 pending before the learned Metropolitan Magistrate, Court No.16, Ahmedabad as well as the order dated 11.1.1996 issuing summons passed by the learned Metropolitan Magistrate, Court No.16, Ahmedabad, are hereby quashed. Rule is made absolute accordingly.

[HARSHA DEVANI, J.]

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